



## NEW YORK AMENDATORY CHANGE ENDORSEMENT

It is hereby agreed that this endorsement amends coverage under the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE**, the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART OCCURRENCE**, the **HEALTHCARE PROVIDERS GENERAL LIABILITY COVERAGE PART**; and the **HEALTHCARE PROVIDERS WORKPLACE LIABILITY COVERAGE PART** when attached to this Policy, as follows.

1. **Section III. DEFENSE AND SETTLEMENT** of the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE** and the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART OCCURRENCE** is deleted and replaced with the following:

### III. DEFENSE AND SETTLEMENT

We have the right and duty to defend any **claim** that is a **professional liability claim**, **Good Samaritan Claim**, **personal injury claim** or **malpractice claim**. We will:

- A. do this even if any of the charges of the **claim** are groundless, false or fraudulent; and
- B. investigate and settle any **claim** as we feel appropriate.

Our payment of the limit of liability, or the applicable sublimit of liability, ends our duty to defend or settle. If we conclude based on **claims** which have been reported to us that the limits of liability are likely to be used up in the payment of judgments or settlements, we will notify the first **named insured**, in writing as soon as practicable, to that effect. When the limit of liability as stated on the **Certificate of Insurance** has actually been used up in the payment of judgments or settlements, we will:

1. notify the **named insured**, in writing, as soon as practicable that the limit of liability has been exhausted and that our duty to defend has ended;
2. initiate and cooperate in the transfer of control to **you**, as appropriate, of all **claims** which were reported to us before the limit of liability was exhausted but remain open after the limit of liability has been depleted and our duty to defend has ended. **You** must cooperate in the transfer and control of said **claims**;
3. agree to take such steps, as appropriate and subject to the cooperation of **you**, or continue the defense of such **claims** until a transfer of control is complete.

In exchange, **you** agree to:

1. arrange for a defense of such **claims** within a time period agreeable to us, or in the absence of such agreement, as soon as practicable;
2. reimburse us for expenses incurred in taking the steps we deem appropriate in accordance with this section, which duty to reimburse shall begin on:
  - a. the date on which the applicable limit of liability is used up if notice was sent in accordance with this section; or
  - b. the date on which notice was received in accordance with this section.

The exhaustion of the limit of liability by the payment of judgments or settlements, and the resulting termination of our duty to defend in accordance with the policy terms shall not be affected by our failure to comply with any of the provisions of this section.

We have no duty to defend any **claims** not covered by this Coverage Part.



The **medical incident** must happen on or after the effective date of the policy and before the end of the policy period as stated on the **certificate of insurance**.

2. **Section IV. ADDITIONAL DEFINITIONS** of the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE** and the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART OCCURRENCE** is amended as follows:

A. The definition of **“assault”** is deleted and replaced by the following:

**“Assault”** means any willful attempt to inflict physical harm on **you** by another which results in **injury** or **damage**, as a result of the use of reasonable physical force to protect any person(s) or property.

B. The following new definitions are added:

**“Indirect sexual misconduct claim”** means a **claim** of **sexual misconduct** against any of **you** who did not participate in, direct, or knowingly allow any act of **sexual misconduct**.

**“Sexual Misconduct”** means any type of physical touching or caressing, or attempt thereof, or suggestion thereof which could be considered sexual or erotic in nature, including consensual sexual activity or sexual activity in contravention of any professional code of ethics or conduct; or any act of sexual assault, harassment, abuse or molestation.

3. **Section V. EXCLUSIONS** of the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE** and the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART OCCURRENCE** is amended by deleting Exclusions F., L., and P. in their entirety and replacing them with the following:

F. a willful violation of a statute, ordinance or regulation imposing criminal penalties. We shall provide **you** with a defense of such **claim** unless or until such willful violation has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of our rights under this Policy. In such case, we will pay only **claim expenses**. Criminal proceedings are not covered under this Policy regardless of the allegations made against **you**;

L. actual or alleged involvement in any:

1. federal or state anti-trust law violation; or
2. agreement or conspiracy to restrain trade.

However, we shall provide **you** with a defense of **claims** arising from **your** activity as a member of any committee, panel, or board which provides underwriting or claims advice or recommendations, provided **your** activity is within the scope of the committee's, panel's, or board's established guidelines, unless or until **your** activity has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of our rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against **you**;

P. any actual or alleged act of **sexual misconduct**. We shall provide **you** with a defense of such **claim** unless or until such act of **sexual misconduct** has been determined to have occurred, by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of our rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against **you**. However, this exclusion shall not apply to **indirect sexual misconduct claims**.



4. **Section VI. LIMITS OF LIABILITY** of the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE** and the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART OCCURRENCE** is amended with the addition of the following:

- A. The **indirect sexual misconduct claim** aggregate sublimit of liability shown on the **Certificate of Insurance** is the most we will pay for the sum of all amounts **you** are legally obligated to pay as a result of all **indirect sexual misconduct claims** against **you**.
- B. The **indirect sexual misconduct claim** aggregate sublimit of liability shall apply to any and all **claims** arising out of the same or related acts or omissions.
- C. The **indirect sexual misconduct claim** aggregate sublimit of liability shall be included within, and is not in addition to, the Aggregate Limit of Liability set forth on the **Certificate of Insurance**.

5. **Section VII. DUTIES IN THE EVENT OF A CLAIM** of the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE** and the **HEALTHCARE PROVIDERS PROFESSIONAL LIABILITY COVERAGE PART OCCURRENCE** is amended with the addition of the following:

Notice given by or on **your** behalf, or written notice by or on behalf of the injured person or any other claimant, to our licensed program administrator in this State, with particulars sufficient to identify **you**, shall be deemed notice to us.

The failure to give any notice required by this Policy within the time prescribed herein, shall not invalidate any **claim** made, if it can be shown, that it was not reasonably possible to give such notice within the prescribed time and if notice was given as soon as was reasonably possible.

6. **Section II. DEFENSE AND SETTLEMENT** of the **HEALTHCARE PROVIDERS GENERAL LIABILITY COVERAGE PART** and the **HEALTHCARE PROVIDERS WORKPLACE LIABILITY COVERAGE PART** when attached to this Policy, is deleted and replaced with the following:

**II. DEFENSE AND SETTLEMENT**

We have the right and duty to defend any **claim**. We will:

- A. do this even if any of the charges of the **claim** are groundless, false or fraudulent; and
- B. investigate and settle any **claim** as we feel appropriate.

Our payment of the limit of liability ends our duty to defend and settle. If we conclude based on **claims** which have been reported to us that the limits of liability are likely to be used up in the payment of judgments or settlements, we will notify the first **named insured**, in writing as soon as practicable, to that effect. When the limit of liability as stated on the **Certificate of Insurance** has actually been used up in the payment of judgments or settlements, we will:

1. notify the **named insured**, in writing, as soon as practicable that the limit of liability has been exhausted and that our duty to defend has ended;
2. initiate and cooperate in the transfer of control to **you**, as appropriate, of all **claims** which were reported to us before the limit of liability was exhausted but remain open after the limit of liability has been depleted and our duty to defend has ended. **You** must cooperate in the transfer and control of said **claims**;
3. agree to take such steps, as appropriate and subject to the cooperation of **you**, or continue the defense of such **claims** until a transfer of control is complete.



In exchange, **you** agree to:

1. arrange for a defense of such **claims** within a time period agreeable to us, or in the absence of such agreement, as soon as practicable;
2. reimburse us for expenses incurred in taking the steps we deem appropriate in accordance with this section, which duty to reimburse shall begin on:
  - a. the date on which the applicable limit of liability is used up if notice was sent in accordance with this section; or
  - b. the date on which notice was received in accordance with this section.

The exhaustion of the limit of liability by the payment of judgments or settlements, and the resulting termination of our duty to defend in accordance with the policy terms shall not be affected by our failure to comply with any of the provisions of this section.

We have no duty to defend any **claims** not covered by this Coverage Part.

The **occurrence** must happen on or after the effective date of the policy and before the end of the policy period as stated on the **certificate of insurance**.

7. **Section III. ADDITIONAL DEFINITIONS** of the **HEALTHCARE PROVIDERS GENERAL LIABILITY COVERAGE PART** and the **HEALTHCARE PROVIDERS WORKPLACE LIABILITY COVERAGE PART** when attached to this Policy, is amended with the addition of the following new definition:

**“Sexual Misconduct”** means any type of physical touching or caressing, or attempt thereof, or suggestion thereof which could be considered sexual or erotic in nature, including consensual sexual activity or sexual activity in contravention of any professional code of ethics or conduct; or any act of sexual assault, harassment, abuse or molestation.

8. **Section IV. EXCLUSIONS** of the **HEALTHCARE PROVIDERS GENERAL LIABILITY COVERAGE PART** and the **HEALTHCARE PROVIDERS WORKPLACE LIABILITY COVERAGE PART** when attached to this Policy, is amended by deleting Exclusions F. and V. in their entirety and replacing them with the following:

F. **injury** or **damage** resulting from an **occurrence** which is also a willful violation of a statute, ordinance or regulation imposing criminal penalties. We shall provide **you** with a defense of such **claim** unless or until such willful violation has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of our rights under this Policy. In such case, we will pay only **claim expenses** related to such defense. Criminal proceedings are not covered under this Policy regardless of the allegations made against **you**;

V. any act of **sexual misconduct**. Criminal proceedings are not covered under this Policy regardless of the allegations made against **you** or any legal or factual finding related thereto;

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.